

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6709**

**BILL NUMBER:** HB 1255

**NOTE PREPARED:** Dec 18, 2002

**BILL AMENDED:**

**SUBJECT:** Elimination of Death Penalty.

**FIRST AUTHOR:** Rep. Smith V

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

(A) It abolishes the death penalty.

(B) It specifies that if a person was sentenced to death and is awaiting execution of the death sentence, the person's death sentence is commuted to a sentence of life imprisonment without parole.

(C) It makes conforming amendments.

**Effective Date:** Upon passage.

**Explanation of State Expenditures:** State agencies affected by the death penalty include the Department of Correction, which houses the offenders, the Office of the Attorney General and the Office of the State Public Defender, which represent the state and offender in the appeals phase of the sentencing, and the Indiana State Police, which provides security during phases of the appeal and, ultimately, in the execution.

Offenders sentenced to death generally require significantly greater legal representation during the review of their cases at the state and federal level. For the state, abolishing the death penalty will reduce the costs of legal representation and the costs associated with security at the time of execution for these offenders. At the same time, the Department of Correction will incur additional costs associated with housing these offenders and health care costs for decades longer, rather than if they had been executed.

To make these comparisons, this fiscal note states these cost streams in a single number at a beginning point in time (July 1, 2003) that would be needed to pay for the future payments for these offenders whether they would be executed or remain incarcerated for their natural lives.

Removing the death penalty option would eliminate reimbursements of 50% to counties from the Public Defense Fund for the cost of defending indigent persons tried in capital cases.

The following shows the reimbursements from the Public Defender Fund for capital cases over the past five years.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Capital Cases	\$799,450	\$526,512	\$378,209	\$712,055	\$473,317

The fund receives an annual statutory allotment of \$2.4 M derived from a transfer from the state General Fund under IC 33-19-7-5 and an additional appropriation from the state budget of \$3.6 M in FY 2002.

The Public Defense Fund is also used to partially reimburse the costs of defending indigent persons in noncapital cases at 40% of the cost of defending indigent persons.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Non-Capital Cases	\$1,031,467	\$2,188,699	\$3,302,471	\$3,669,318	\$4,869,314

*For the current population on death row, the net present value of commuting the death sentences to life without parole exceeds the net present value of executing these offenders by over 100%. However, when taking into account the costs to the counties of conducting a death penalty trial in addition to the state for incarceration and legal appeals, the discounted costs of the death penalty exceed the costs of sentencing one offender to life without parole by 21% under the less stringent requirements for legal representation.*

The Indiana Supreme Court reports that 41 offenders are currently on Death Row in Indiana at various stages of federal and state review. The Indiana State Supreme Court reports that these offenders are at the following stages of appeal:

Stage	Number of Offenders
Federal Appeal	26
Post Conviction Relief	8
Direct Appeal	<u>7</u>
<b>Total Offenders on Death Row</b>	<b>41</b>

Commuting the death sentences of these offenders will extend their life expectancy from between one and ten years to an additional three to four decades. The table below represents the estimated costs to the Department of Correction, the Office of the State Attorney General, and the Office of the State Public Defender under the following alternatives: first, if no change occurs in current law, and second, if all offenders currently on Death Row are commuted to life without parole.

The two sentencing options result in costs occurring at different points in time. The death penalty results in higher costs occurring during the appeals process at the state and federal level, but with no costs after the execution date. The appeals process for offenders sentenced to life without parole is significantly less, but these offenders must be housed for decades longer than those who are executed. The staffing costs and health

costs are described in more detail below.

**Staffing Costs:** For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$12,004. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$3,724 for a case involving life without parole. Besides the staff costs for legal representation, both the Department of Correction and the Indiana State Police generally incur added overtime costs for providing security around the time of the execution.

**Long-Term Costs of Offenders Sentenced to Life Without Parole:** The per diem and health care costs of offenders can significantly increase as offenders age. Under current law, offenders currently on Death Row will likely be executed within the next two to ten years. Consequently, this cohort of offenders will likely be executed by the year 2012. If all of these offenders are resentenced to life without parole, then a portion of these offenders are presumed to die in prison between 2030 and 2055, depending on their current age, race, sex, and health status. As this offender population continues to age, health care costs will increase.

The analysis below takes these additional costs into account.

The costs are increased by an inflation rate of 5.2% over the extended lifetime of the offenders to account for inflation associated with the costs of offenders remaining in prison. A net present value using a discount rate of 7.9% is then calculated to represent a single amount needed beginning in 2003 to pay for the lifetime of costs for these offenders in either scenario.

<b>Long Term Costs for Offenders At Various Stages:</b>	<b>Net Present Value If:</b>	
	<b>No Change in Current Law</b>	<b>All Death Row Offenders Receive Life Without Parole</b>
Federal Appeals	\$1,874,464	\$6,366,131
Post Conviction Relief	\$1,142,406	\$3,972,517
Direct Appeal	\$2,697,246	\$3,889,379
Total Costs	\$5,714,116	\$14,228,027

Essentially the costs associated with executing these offenders already on Death Row is 40% less than the costs of commuting their sentences to life without parole.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** This bill would reduce the costs to the counties for offenders who are currently on Death Row and for those criminal defendants for whom a request for the death penalty has been filed.

*Background:* Of the two sentencing options for murder under IC 35-50-2-9, the death penalty is the more expensive for trial courts to conduct. This is because Criminal Rule 24 of the Indiana Supreme Court requires that a criminal defendant in a death penalty case in which all offenders for whom the death penalty was requested receive two attorneys and an almost unlimited expense account. A bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Under the sentencing for life imprisonment without parole, while a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted, two attorneys are not required for legal representation.

The following table summarizes the difference between these three options:

<b><u>Sentencing Option</u></b>	<b><u>Number of Defense Attorneys Needed</u></b>	<b><u>Type of Trial Conducted</u></b>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.

**Offenders on Death Row Filing Direct Appeal:** Seven offenders are in the direct appeal stage following a trial in which the death sentence was imposed. The county in which the case was prosecuted pays for the costs of the appeals and may be reimbursed by the Public Defense Fund for half of all qualified expenditures. LSA estimates that the average cost of a death penalty appeal before reimbursement is \$54,000, while the cost of appealing a sentence before reimbursement involving life without parole is \$5,400. Consequently, the costs of appeals for counties would be significantly less if these offenders on death row are resentenced to life without parole.

**Offenders Awaiting Trial:** As of November 2002, ten defendants are awaiting trial in six counties where the death penalty has been requested by the prosecuting attorney. Since preparations for these trials are at various stages for each defendant, it is difficult to determine how this bill would reduce the costs to the counties where these trials are occurring.

Legislative Services Agency staff, at the request of the Criminal Law Study Commission, compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

<b>Cost Components for Murder Trials:</b>		
	<b><u>Death Penalty</u></b>	<b><u>Life Without Parole</u></b>
Attorneys and Related Costs	\$215,608	\$45,617
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	<b><u>\$327,150</u></b>	<b><u>\$68,561</u></b>

The costs of legal representation for a criminal defendant in a death penalty are between four and five times as expensive compared to the costs of a criminal trial in which the most serious sentence is life without parole.

#### **Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction, Officer of the Attorney General, Office of the State

Public Defender, State Police.

**Local Agencies Affected:** Trial Courts, County Police.

**Information Sources:** Indiana Supreme Court; The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission, January 10, 2002.

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